IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5327 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHARDABEN GAJANAN PATHAK

Versus

BANK OF BARODA

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Appearance:

MR AMAR N BHATT for Appellant No. 1-4

MR RM DESAI for Respondent No. 1

SERVED BY AFFIX.(N) for Respondent No. 2

MR PV NANAVATI for Respondent No. 3

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CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.C.PATEL

Date of decision: 16/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. On a joint request this appeal is taken up for final hearing today.

2. We have learned counsel for the appellants, Mr. R.M. Desai, learned counsel for respondent no.1 and Mr. P.V. Nanavati, learned counsel for respondent no.3. Respondent no.2 is absent though served.

3. This is an appeal under section 96, CPC, challenging the judgement and decree passed by the trial court in Special Civil Suit No.60/87, whereby the suit filed by the first respondent-bank was decreed against the defendant (present respondent no.2.). The appeal has been filed by the original defendant no.2 and the heirs of original defendant no.4.

3. As a result of the hearing and discussion, we find that this appeal is pressed only by the appellant nos.2, 3 and 4 (as original defendant Nos.4-A, 4-B and 4-C) on the ground that since they are the heirs of original defendant no.4, who was a Director in the defendant company, their liability to satisfy the decree would be limited only to the extent of the estate of the deceased defendant no.4 in the hands of the said heirs viz. defendant nos.4-A, 4-B and 4-C. Learned counsel for the respondent no.1 (original plaintiff) fairly conceded that this is the correct position in law.

4. It requires to be noted that the present appeal is not seriously pressed on behalf of appellant no.1-original defendant no.2.

5. On the facts and circumstances of the case, it is found and held that the decree passed by the trial court against original defendant nos.4-A, 4-B and 4-C would be executable against them only to the extent of the property of the deceased which has come into their hands and has not been duly disposed of. Accordingly the appeal is partly allowed only in favour of appellant nos.2, 3 and 4 with no order as to costs. Decree accordingly.

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